

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

Case Number: 92-81127-33

v.

HONORABLE AVERN COHN

JOHN GORDON,

Defendant/Petitioner.

/

**ORDER DENYING MOTION UNDER RULE 59(e) TO ALTER OR AMEND  
JUDGMENT AND/OR FOR RECONSIDERATION (Doc. 2119)**

I.

This is a criminal case. It has a long procedural history. Most recently, Defendant/Petitioner John Gordon (Petitioner) filed a motion § 2255. Because it was not Petitioner's first motion under § 2255, the Court, as it must, transferred it to the Court of Appeals for the Sixth Circuit for a determination of whether Petitioner may pursue the motion.

Before the Court is Petitioner's motion for reconsideration. Petitioner says that the Court erred in not first notifying him that it would be treating the motion as a successive motion under § 2255. This argument lacks merit. The motion was clearly filed under § 2255. This is evidenced by the form Petitioner used and in the title of the motion:

Motion under 2255 Para. 6(3) and (F)(3) for Retroactive Application of "New Substantive Rule" Created by U.S. Supreme Court in Dipierre v. United State 130 S. Ct. 2896 (2011).

While Petitioner says he can file the motion under § 2255 because the Supreme Court's decision was decided after his conviction became final and it is within the statute of limitations, this argument does not carry the day. Because Petitioner has filed at least two prior § 2255 motions, the Court is required to transfer the matter to the Sixth Circuit, regardless of whether the motion is timely. The Sixth Circuit, not this Court, must determine whether, under § 2255(h), Petitioner is able to pursue the motion.

Accordingly, Petitioner is not entitled to reconsideration. See E.D. Mich. LR 7.1 (h)(3). The motion is DENIED.

SO ORDERED.

S/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: July 11, 2012

I hereby certify that a copy of the foregoing document was mailed to John Gordon, 20211-039, Devens Federal Medical Center, Inmate Mail/Parcels, P.O. Box 879 Ayer, MA 01432 and the attorneys of record on this date, July 11, 2012, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5160